Supreme Court, U. S.
FILED
AUG 29 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-146

RUDOLPH SLAGLE, ET AL.,
Appellants,

v.

LUTHER PARKER, ET AL.,
Appellees.

On Appeal from the Supreme Court of Alabama

MOTION TO AFFIRM

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Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the final judgment and decree of the Supreme Court of Alabama be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

CONSTITUTIONAL PROVISIONS AND STATUTES

To the appellants' listing of Constitutional Provisions and Statutes on page 3 of their Jurisdictional Statement, appellees would add section 26-6-53 of the Alabama Code of 1975 which is as follows:

> The rights and remedies herein granted to an employee shall exclude all other rights and remedies of said employee, his personal representative, parent, dependents or next of kin, at common law, by statute or otherwise on account of said injury, loss of services or death. Except as provided in this article and article 2, as the case may be, of this chapter, no employer included within the terms of this chapter and no officer, director, agent, servant or employee of such employer shall be held civilly liable for any personal injury to or death of any workman who is an employee of the same employer and whose injury or death is due to an accident while engaged in the service or business of the employer, the cause of which accident originates in the employment. . . .

STATEMENT OF THE CASE

Appellees agree with and accept the Statement of the Case as presented by the appellants in their Jurisdictional Statement, page 5, *et seq.* Appellees will not restate the facts contained therein.

Appellees wish to emphasize that each of the three accidents forming the basis of the three consolidated actions was compensable under the Alabama Workmen's Compensation Act.[1] In each instance all benefits under the the Act have been paid.

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[1] ALA. CODE, § 25-5-1, *et seq.* (1975).

ARGUMENT

The decision of the Supreme Court of Alabama is correct and is in accord with the decisions of this Court. The appellants' Jurisdictional Statement fails to support the contention that the challenged legislation violates the due process and equal protection guarantees of the fourteenth amendment. On the contrary, the constitutionality of legislation of the kind under consideration in this case has been upheld by decisions of this Court.

The due process argument advanced by the appellants is, simply stated, that the legislature cannot abolish a right to bring an action for wrongful death once that right has been granted. This Court has held, however, that "the Constitution does not forbid the creation of new rights, or the abolition of old ones . . ." *Silver v. Silver*, 280 U.S. 117, 122 (1929). Furthermore, the right to bring an action for wrongful death is not a "property" to which the protection of due process applies. As stated by this Court, "[a] person has no property, no vested interest, in any rule of law entitling him to insist that it shall remain unchanged for his benefit." *New York Central Railroad v. White*, 243 U.S. 188, 198 (1917).

The equal protection challenge by the appellants is not clearly defined, but it is apparently based upon a claim that the legal consequences of a wrongful act differ, depending upon whether personal injury or death results. To the extent that this constitutes a classification to which the equal protection guarantee applies, this classification existed at common law and exists today in numerous statutes, including the Alabama wrongful death statute.[2]

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[2] The right to sue for wrongful death did not exist at common law, but is purely statutory. Kennedy v. Davis, 171 Ala. 609, 55 So. 104 (1911); White v. Ward, 157 Ala. 345, 47 So. 166 (1908). A wrong-

The Constitution does not prohibit a State from treating accidents which occur in the course of employment separately from all other accidents. *Hawkins v. Bleakly*, 243 U.S. 210 (1916). Alabama has done this, electing to provide for all employment-related accidents in its Workmen's Compensation Act. When an accident covered by the Workmen's Compensation Act results in the death of the injured employee, benefits are payable under the Act. Furthermore, the dependents of the decedent are given the right to sue any third party to the employment relationship for the wrongful death of the workman.[3] This is the only instance under Alabama law in which a dependent has a right to sue for wrongful death.[4]

It is therefore clear that the appellants herein are not being distinguished from any other similarly situated individuals. Had the injuries received by their decedents been received in accidents arising outside their employment, these appellants would have had no claim. Had the accidents been employment related and the injuries non-fatal, these appellants would have had no claim. Because the accident proved fatal and arose in the course of employment, appellants are granted rights which neither they nor similarly situated individuals otherwise would

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ful act causing death did not give rise to a civil action under the common law, yet the same act could have been the subject of a civil suit had the injuries been less than fatal. The distinction in remedies continues today. The Supreme Court of Alabama has long construed the Alabama wrongful death statute, ALA. CODE, §6-5-410 (1975), to allow for recovery of punitive damages only, whereas compensatory damages could also be sought were the injuries non-fatal.

[3] ALA. CODE, §25-5-11 (1975).

[4] In general, the right to bring an action for wrongful death is reserved exclusively to the personal representative of the decedent. ALA. CODE §6-5-410 (1975). The Workmen's Compensation Act withdraws this right and substitutes in its place the right of dependents to bring the action. Georgia Cas. Co. v. Haygood, 210 Ala. 56, 97 So. 87 (1923); Robinson v. Western Ry., 243 Ala. 278, 9 So.2d 885 (1942). The only authority permitting a dependent to sue for wrongful death in Alabama is found in ALA. CODE §25-5-11 (1975).

have enjoyed. The claim by appellants that they are members of some class which has been deprived of some right is totally without merit.

The constitutionality of workmen's compensation legislation that grants immunity to parties other than the employer and makes the action for compensation the exclusive remedy has been upheld in *Northern Pacific Railway v. Meese*, 239 U.S. 614 (1916). Appellants contend, however, that the present case should be distinguished from *Northern Pacific Railway v. Meese, supra*, because the legislation under consideration in that case did not differentiate between personal injury and death of employees but granted immunity in both instances. The contention that equal protection of the law requires that any legislative grant of immunity may not be restricted to cases involving the death of certain employees is contrary to existing law and would involve a novel interpretation of the fourteenth amendment.

The mere fact of providing immunity only in certain cases involving wrongful death is not itself unconstitutional. An example of constitutionally permissible legislatior providing immunity in cases involving wrongful death but not in cases involving personal injury may be seen in *Schloss v. Matteucci*, 260 F.2d 16 (10th Cir. 1958). As in this case, the appellants in *Schloss v. Matteucci, supra*, contended that a statute providing a fixed sum recovery for wrongful death denied the equal protection of the law because it had been construed to exclude all other liability for wrongful death, thereby precluding further recovery in death cases though allowing recovery for injury not resulting in death. Although the statute in question applied to injuries on public conveyances rather than to workmen's compensation, the court noted that the statute was "not constitutionally unlike workmen's compensation acts, which provide

fixed sums for employers' liability to employees and make that recovery exclusive of all other liability to whomsoever."[5]

ALA. CODE §26-6-11 (1975) is rationally related to the overall purpose of all workmen's compensation legislation—that of placing upon industry, and not individual employees, the burden of industrial accidents. The cases cited above show that the challenged legislation is in furtherance of, and not contrary to, the underlying purposes of all workmen's compensation legislation. The appellants have not presented a substantial question for decision by this Court, and the decision of the Supreme Court of Alabama should be affirmed.

CONCLUSION

The opinion below is plainly correct and, appellants have failed to raise a question worthy of this Court's review. Appellants have failed to show that they are in a class that is deprived of any right that similarly situated individuals enjoy.

The opinion below should, therefore, be affirmed.

Respectfully submitted,

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[5] 260 F.2d at 18.

Certificate of Service

I hereby certify that on this 28th day of August, 1979, copies of this Motion to Affirm were mailed, postage prepaid, to all parties required to be served, in accordance with Rule 33 of the Rules of the Supreme Court of the United States.

JOHN B. TALLY, JR.